COMMONWEALTH OF MASSACHUSETTS

IN THE MATTER OF) BROWNFIELDS COVENANT) NOT TO SUE AGREEMENT
PREFERRED REAL ESTATE INVESTMENTS, INC. REDEVELOPMENT OF 34 FOREST STREET, ATTLEBORO, MASSACHUSETTS) DEP RTN 4-0000022 DEP RTN 4-0018848 DEP RTN 4-0016070)

I. STATEMENT OF PURPOSE

- A. This Agreement is made and entered into by and between the Office of the Attorney General (the "OAG"), on behalf of the Commonwealth of Massachusetts (the "Commonwealth"), and PREI Attleboro Associates, Limited Partnership, PREI Attleboro, Inc., PREI Attleboro Associates II, Limited Partnership, PREI Attleboro II, Inc., PREI Attleboro Associates III, Limited Partnership, and PREI Attleboro III, Inc. (collectively, the "PREI Entities"). The OAG and the PREI Entities are collectively referred to as the "Parties."
- B. This Agreement is entered into pursuant to the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, as amended and codified in Massachusetts General Laws Chapter 21E ("G.L. c. 21E"), and the OAG's Brownfields Covenant Not to Sue Agreement Regulations at 940 CMR 23.00 ("Brownfields Covenant Regulations"), with reference to the Massachusetts Contingency Plan, 310 CMR 40.0000 (the "MCP"). This Agreement relates to the redevelopment of a portion of the former Texas Instruments facility located at 34 Forest Street, Attleboro, Massachusetts into a corporate campus with office, light manufacturing, and research space as well as a residential development (the "Project").
- C. The Parties intend to set forth in this Agreement their respective duties, obligations and understanding so that the Project can contribute to the physical and economic revitalization of an area of Attleboro, Massachusetts. The Parties agree that this Agreement, pursuant to G.L. c. 21E, §3A(j)(3), relates to potential claims by the Commonwealth as to the PREI Entities and is predicated upon the PREI Entities' compliance with the terms and conditions of this Agreement. This Agreement relates to potential claims brought by third parties for contribution, Response Action costs or property damage pursuant to G.L. c. 21E, §§ 4 and 5, or for property damage under common law. This Agreement also addresses potential claims for natural resource damages. This Agreement does not, however, address liability arising under contract law.
- D. The Parties agree that the PREI Entities' ability to conduct the Project may be contingent upon independent approval processes of other departments, agencies and instrumentalities of the federal, state and local governments. Nothing in this Agreement should

be construed as an endorsement by the OAG of the proposed project for such approval processes. The PREI Entities' failure to secure independent governmental approvals for the Project shall not excuse it from performance of any term or condition of this Agreement.

E. The Commonwealth believes that this Agreement is fair, consistent with G.L. c. 21E and in the public interest, and has entered into this Agreement as part of an effort to revitalize an area of Attleboro, Massachusetts.

II. THE PARTIES

- A. The OAG is a duly constituted agency of the Commonwealth of Massachusetts charged with the legal representation of the Commonwealth and maintains offices at One Ashburton Place, Boston, Massachusetts 02108. Included within the OAG's authority is the authority to enter into Brownfields Covenant Not to Sue Agreements pursuant to G.L. c. 21E, §3A(j)(3), which provides liability relief under G.L. c. 21E.
- B. The PREI Entities include three limited partnerships, organized under the laws of the state of Pennsylvania, with ownership interests in the Project site. More specifically, PREI Attleboro Associates, LP owns Lots A, A-1, A-2, A-3, B and C, PREI Attleboro Associates II, LP owns Lots D and E. Three corporations organized under the laws of the state of Pennsylvania -- PREI Attleboro, Inc., PREI Attleboro II, Inc., and PREI Attleboro III, Inc -- serve as the general corporate partners of the limited partnerships with operation responsibilities for the Project site. The PREI Entities have a principal mailing address of 1001 East Hector Street, Suite 100, Conshohocken, Pennsylvania 09428. In accordance with this Agreement, the PREI Entities shall collectively undertake the Project as described in Section IV, Paragraph A, subparagraph 2, below.

III. STATEMENT OF FACT AND LAW

- A. The Commonwealth enters into this Agreement pursuant to its authority under G.L. c. 21E, §3A(j)(3), and the Brownfields Covenant Regulations.
- B. Unless otherwise expressly provided, terms used in this Agreement which are defined in the Brownfields Covenant Regulations shall have the meaning assigned to them under those regulations. Terms not defined in the Brownfields Covenant Regulations, but defined under G.L. c. 21E or the MCP, shall have the meaning assigned to them under G.L. c. 21E or the MCP. Terms used in this agreement which are defined in Brownfields Covenant Regulations, G.L. c. 21E, or the MCP are capitalized.
- C. The Project involves a tract of land of approximately 270 acres at 34 Forest Street in Attleboro (the "Property"). The Property is more fully described in <u>Exhibit A</u>, attached and incorporated into this Agreement. Due to historic industrial activities at the Property chlorinated solvents, heavy metals and Oil are present in the soils at the Property. In addition, groundwater beneath the Property and some downgradient properties contain chlorinated solvents.

D. The Department of Environmental Protection ("DEP") received notices of Releases of Oil and/or Hazardous Materials at or from the Property, and assigned six (6) Release Tracking Numbers ("RTNs") for these Releases. A previous owner of the Property, Texas Instruments, Inc. ("Texas Instruments"), is currently engaged in Response Actions to address these Releases. Those portions of the Property and adjacent land where Oil and/or Hazardous Materials were and have come to be located as a result of the Releases with lead RTNs 4-000022, 4-016070, and 4-0018848 constitute the "Site," as that term is defined in 310 CMR 40.0006, for the purposes of this Agreement. The Site is also the property addressed by this Agreement for the purposes of 940 CMR 23.08(1) in the Brownfields Covenant Regulations. The Site, as it has been characterized to date, is more fully described on Exhibit B, which is attached and incorporated into this Agreement. Exhibit B describes in detail the environmental conditions, including the currently known nature and extent of contamination suspected to exist at the Site.

RTN 4-000022 concerns a chlorinated solvent Release that impacted overburden and bedrock groundwater. The area impacted by the Release includes a source area on the Property and on property owned by STAG Capital Partners and operated by Engineered Material Solutions, Inc. ("EMSI"). The area impacted by the Release also extends beyond the source area to the south, off the Property, and includes the following parcels: Conrail/MBT Railroad; Forest Street Right-of-Way; Ralph Schuster Metals, Inc. (Map 61, Lots 169, 170 & 184G, Thomas & Betts Corp. (Map 52, Lot 109B); and 38 Forest Street, LLC (Map 61, Lot 168) and Attleboro RA, LLC (Map 56, Lot 4). Aqueous phase chlorinated solvent concentrations suggest the possible presence of chlorinated solvent Dense Non-Aqueous Phase Liquid (DNAPL) within the saturated zone (both overburden and bedrock) in the source area. This condition poses challenges for achieving a Permanent Solution. The Release has a Class C "Temporary Solution" Response Action Outcome ("RAO") Statement that may be appropriate for the Release until a Permanent Solution is feasible to achieve. Texas Instruments currently operates a groundwater treatment system to address the Release. Two RTNs assigned for Releases of Oil in the area between Buildings 3 and Building 6 reported in January 2001 were merged with RTN 4-000022 and closed as independent RTNs: RTN 4-016018 assigned to a Release of volatile petroleum hydrocarbons in groundwater; and RTN 4-016019 assigned to Release of extractable petroleum hydrocarbons in groundwater.

RTN 4-016070 concerns a Release of several metals including barium, beryllium, cadmium, chromium, copper, lead, mercury, nickel, silver and zinc into the soil and groundwater. Texas Instruments submitted a Phase II Comprehensive Site Assessment and Phase III Remedial Action Plan on February 12, 2004 with respect to this Release. An Addendum to the Phase II Comprehensive Site Assessment Including Method 3 Risk Characterization was submitted on July 28, 2005 (the "Addendum"). The Addendum presented a risk characterization analysis and conclusions that: 1) the areas affected by the Release did not exceed Upper Concentration Limits; and 2) the requirements for a Class A RAO under 310 CMR 40.000 (i.e., achieving a Permanent Solution) have been met. Two Activity and Use Limitations ("AULs") addressing separate parcels have been recorded for the portion of the Site affected by this Release; the public notice periods for these AULs have been satisfied. A Class A-3 RAO

Statement dated January 13, 2006 has been filed for final disposition of this Release with a Permanent Solution.

RTN 4-0018848 covers a release of Oil to soils within the Building 1 courtyard area. A secondary RTN, 4-0019269 for a report of greater than 0.5-inches of oil in a monitoring well, has been linked to the lead RTN 4-0018848. The Phase I Report was completed and the Site was classified as Tier II. The Phase II Comprehensive Site Assessment, Method 3 Risk Characterization and a Class B-1 RAO were filed for this RTN on March 30, 2006.

IV. COMMITMENTS AND OBLIGATIONS

In consideration of the representations made and promises exchanged by and between the Parties, each of them covenants and agrees to the terms and conditions which follow.

A. REPRESENTATIONS AND COMMITMENTS BY THE PREI ENTITIES

- 1. Each PREI Entity represents that:
 - a. it is an Eligible Person;

Property;

- b. it is not at the time of execution of this Agreement a person with potential liability for the Site pursuant to G.L. c. 21E other than pursuant to clause (1) of paragraph (a) of Section 5 of G.L. 21E;
- c. it is not now nor has it ever been previously affiliated with any person having potential liability for the Site pursuant to G.L. c. 21E, except as set forth below;
 - d. its involvement with the Site has been limited to:
 - i. evaluating the Property for purposes of acquiring the
 - ii. negotiating to acquire and acquiring the Property; and
- iii. communicating with the Commonwealth and local authorities with respect to the design and planning of the Project and various permitting issues with respect to the Property;
- e. none of its activities has caused or contributed to the Release or Threat of Release of Oil and/or Hazardous Material at the Site under G.L. c. 21E and/or the MCP; and

- f. it is not at the time of execution of this Agreement subject to any outstanding administrative or judicial environmental enforcement action arising under any applicable federal, state or local law or regulation.
 - 2. The PREI Entities agree to the following terms and conditions:
- a. The PREI Entities shall endeavor to redevelop the Property in the following manner: the portion of the Property with existing buildings (shown as lots A, B, C, G and H on design plans for the Project, attached as Exhibit C) shall be redeveloped for industrial/commercial use. A portion of the Property (lot F on Exhibit C) has been developed as a new state-of-the-art "build to suit" building for commercial or office space. The PREI Entities shall use best efforts to create at least 1,250-1,500 new, permanent jobs, and to attract a variety of new, light manufacturing, metal fabricating, biotechnology and other light technology to assist in revitalizing the economy of Attleboro through new jobs and generation of new tax revenue.
- b. With respect to contamination at the Property, the PREI Entities shall cooperate fully with Texas Instruments in connection with Texas Instruments' achieving and maintaining a Permanent Solution, Remedy Operation Status ("ROS"), or Temporary Solution at the Property and the Site in accordance with G.L. c. 21E and the MCP.
- c. The PREI Entities shall also cooperate fully with DEP. To cooperate fully includes, without limitation:
- i. providing prompt and reasonable access to the Property to DEP for any purpose consistent with G.L. c. 21E and the MCP, and to other persons intending to conduct Response Actions pursuant to G.L. c. 21E and the MCP;
- ii. complying with the Release notification provisions established by G.L. c. 21E and the MCP;
- iii. responding in a timely manner to any request made by the DEP or OAG to produce information as required pursuant to G.L. c. 21E;
- iv. taking reasonable steps to prevent the Exposure of people to Oil and/or Hazardous Materials, such as by fencing or otherwise preventing access to the Site if appropriate and/or necessary to prevent such Exposure or as otherwise required by G.L. c. 21E, the MCP, DEP or a Licensed Site Professional, if required by DEP or a Licensed Site Professional acting pursuant to the MCP;
- v. taking reasonable steps to contain any further Release or Threat of Release of Oil and/or Hazardous Material from a structure or container at the Property or the Site, upon obtaining knowledge of a Release or Threat of Release of Oil and/or Hazardous Material; and

vi. conducting, or causing to be conducted, Response Actions at the Site in accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E, and the MCP.

B. COVENANT NOT TO SUE BY THE COMMONWEALTH

1. The PREI Entities

Pursuant to G.L. c. 21E, §3A(j)(3), in consideration of the representations and commitments by the PREI Entities set forth in Section IV, Paragraph A of this Agreement, and subject to the PREI Entities' compliance with the terms and conditions of this Agreement and the Termination for Cause provisions described below in Section IV, Paragraph B, subparagraph 5, the Commonwealth covenants not to sue the PREI Entities, pursuant to G.L. c. 21E, for Response Action costs, contribution, natural resource damages or injunctive relief relating to the Releases of Oil and/or Hazardous Material assigned an RTN and referenced in Section III, Paragraph D, above, so long as the Release of Oil and/or Hazardous Material is fully described and delineated in the Response Action Outcome ("RAO") Statement or ROS Submittal to be submitted to DEP with respect to the Site, and the Response Actions upon which the RAO Statement or ROS Submittal relies meet the Standard of Care in effect when the RAO Statement or ROS Submittal is submitted to DEP. The Commonwealth's covenants in this Paragraph shall vest on the effective date of this Agreement as defined in Section IV, Paragraph E, subparagraph 5. This Agreement shall not affect any liability established by contract.

2. Subsequent Owners and/or Operators

The Commonwealth covenants not to sue Eligible Persons who are successors, assigns, lessees or licensees of the PREI Entities' real property interests in the Property or any portion of the Property, or who are lessees or licensees of their successors and assigns (the "Subsequent Owners and/or Operators"), pursuant to G.L. c. 21E, for Response Action costs, contribution, natural resource damages or injunctive relief resulting from any Release of Oil and/or Hazardous Material assigned an RTN and referenced in Section III, Paragraph D, above, so long as the Release of Oil and/or Hazardous Material is fully described and delineated in the RAO Statement or ROS Submittal submitted to DEP with respect to the Site, and the Response Actions upon which the RAO Statement or ROS Submittal relies meet the Standard of Care in effect when the RAO Statement or ROS Submittal is submitted to DEP. The liability relief available to a Subsequent Owner and/or Operator shall be subject to the same terms and conditions as those that apply to the PREI Entities under Section IV, paragraph A, subparagraph 2 with respect to the portion of the Site such Subsequent Owner and/or Operator owns or operates, and the Subsequent Owner's and/or Operator's covenant not to sue the Commonwealth in Section IV, paragraph C, with respect to such portion of the Property owned or operated by such Subsequent Owner and/or Operator.

3. Applicability of the Agreement

This Agreement shall be in effect with respect to each PREI Entity unless

and until the statutory protections available to the PREI Entity or Subsequent Owners and/or Operators pursuant to G.L. c. 21E, §5C, are in effect. This Agreement is subject to the Termination for Cause provisions described below in Section IV, Paragraph B, subparagraph 5.

4. Reservations of Rights

The Commonwealth's covenants in this Agreement shall not apply to:

- a. any Release of Oil and/or Hazardous Material at or from the Property that occurs after the date of execution of this Agreement;
- b. any Release of Oil and/or Hazardous Material which any PREI Entity or any Subsequent Owner and/or Operator causes, contributes to, or causes to become worse, but if the cause or contribution is that of a Subsequent Owner and/or Operator, the Commonwealth's covenants only shall not apply to such Subsequent Owner and/or Operator;
- c. any Release of Oil and/or Hazardous Material at the Site that has not been discovered when either an existing RAO Statement, or a subsequent RAO Statement or ROS Submittal, was submitted to DEP that would have been discovered if an assessment of the Site covered by or addressed in the RAO Statement or ROS Submittal had been performed consistent with the Standard of Care in effect when the RAO Statement or ROS Submittal was submitted to DEP;
- d. any Release or Threat of Release of Oil and/or Hazardous Material from which there is a new Exposure that results from action or failure to act pursuant to G.L. c. 21E or the MCP during the PREI Entities' or a Subsequent Owner's and/or Operator's ownership or operation of the Property, but if the action or failure to act is that of a Subsequent Owner and/or Operator, the Commonwealth's covenants only shall not apply to such Subsequent Owner and/or Operator;
- e. any Release of Oil and/or Hazardous Material not expressly described in Section IV, Paragraph B above; and
- f. any claims (i) for damages for injury to, destruction of, or loss of natural resources due to a Release of Oil and/or Hazardous Material first occurring after the execution of this Agreement, (ii) for exacerbation of injury to, destruction of, or loss of natural resources due to a Release of Oil and/or Hazardous Material occurring either before or after the execution of this Agreement, (iii) for the costs of any natural resource damage assessment relating to conditions first caused or exacerbated after the execution of this Agreement; and (iv) for damages for injury to, destruction of, or loss of natural resources due to a Release of Oil and/or Hazardous Material not expressly described in Section IV, Paragraph B above. If, however, injury to, destruction of, or loss of natural resources, or the exacerbation of such conditions, is caused by a Subsequent Owner and/or Operator, the Commonwealth's covenants only shall not apply to such Subsequent Owner and/or Operator and this reservation shall not affect the PREI Entities' or other Subsequent Owners' and/or Operators' liability protection.

5. Termination for Cause

- a. If the OAG or DEP determines that the PREI Entities submitted materially false or misleading information as part of their Application to Enter into a Brownfields Covenant Not to Sue Agreement, the OAG may terminate the liability protection offered by this Agreement in accordance with subparagraph 5.c below. A statement made by the PREI Entities regarding the anticipated benefits or impacts of the proposed Project will not be considered false or misleading for purposes of this subparagraph if the statement was asserted in good faith at the time it was made.
- b. In the event that the OAG or DEP determines that the PREI Entities or a Subsequent Owner and/or Operator have violated the terms and conditions of this Agreement including, but not limited to, failure to pursue development of the Project, failure to cooperate in achievement and maintenance of a Temporary Solution with respect to RTN 4-000022, a Permanent Solution with respect to RTN 4-000022 if one is feasible, or a Permanent Solution or ROS with respect to any other Release at the Site, in accordance with G.L. c. 21E and the MCP, or failure to arrange for a timely response to a Notice of Audit Finding or any other notice requiring additional work to achieve or maintain a Temporary Solution with respect to RTN 4-000022 or a Permanent Solution or ROS with respect to any other Release at the Site, the OAG may terminate the liability protection offered by this Agreement in accordance with subparagraph 5.c., below. In the event that the liability protection is terminated solely because of the actions of a Subsequent Owner and/or Operator, including without limitation a violation of one or more of the conditions set forth in 940 CMR 23.08(3)(a) through (d), the termination shall affect the liability protection applicable only to that Subsequent Owner and/or Operator.
- c. Subject to subparagraph IV.B.5.d. below, the OAG shall have the right to terminate the liability protections offered by this Section IV, Paragraph B if Texas Instruments fails to achieve and/or maintain a Temporary Solution with respect to RTN 4-000022, a Permanent Solution with respect to RTN 4-000022 if one is feasible, or a Permanent Solution or ROS with respect to any other Release at the Site, and no other person or entity has taken over and is performing necessary Response Actions at the Site in accordance with G.L. c. 21E and the MCP. Such termination shall apply only to the specific RTN or Release that is the subject of the failure to achieve and/or maintain a Temporary Solution, Permanent Solution or ROS, and shall be without effect as to any other RTN or Release.
- d. Before terminating the liability relief provided by this Agreement, the OAG will provide the PREI Entities or a Subsequent Owner and/or Operator, as appropriate, with written notice of the proposed basis for, and a 60-day opportunity to comment on, the proposed termination. If the reason for the proposed termination is a failure relating to achievement or maintenance of a Temporary Solution, Permanent Solution or ROS at the Site in accordance with G.L. c. 21E and the MCP, the notice shall provide a reasonable period of time for the PREI Entities or a Subsequent Owner and/or Operator to take over Response Actions at the Site, or otherwise achieve or maintain a Temporary Solution, Permanent Solution or ROS in accordance with G.L. c. 21E and the MCP and any order or agreement regarding cleanup, in lieu of termination of the liability relief provided by this Agreement. The assumption of performance

of Response Actions may include, but would not be limited to, performing the operation and maintenance (O&M) of the existing groundwater treatment system at the Site. The assumption of performance of Response Actions by the PREI Entities or a Subsequent Owner and/or Operator shall not negate the Commonwealth's covenant not to sue the PREI Entities or a Subsequent Owner and/or Operator in accordance with Section IV, Paragraph B of this Agreement. The Commonwealth recognizes that at the time of execution of this Agreement, Texas Instruments is legally required to achieve and/or maintain a Temporary Solution with respect to RTN 4-000022, a Permanent Solution with respect to RTN 4-000022 if one is feasible, and a Permanent Solution or ROS with respect to other Releases at the Site, and the Commonwealth expects Texas Instruments to complete its cleanup responsibilities at the Site. The OAG and DEP retain all available enforcement alternatives, including without limitation those under G.L. 21E and the MCP, against Texas Instruments, to achieve compliance with G.L. 21E and the MCP. Prior to any termination of this Agreement for Texas Instruments' failure to achieve and/or maintain a Temporary Solution, Permanent Solution or ROS with respect to a RTN or Release, DEP and/or the OAG may pursue its available enforcement alternatives against Texas Instruments. Nevertheless, the decision to enforce Chapter 21E and the MCP, and decisions regarding the method of enforcement, are solely the Commonwealth's.

- e. Subject to and without limiting the OAG's right pursuant to subparagraph 5.c. to terminate if Texas Instruments fails in its MCP obligations and no other person has taken over those obligations satisfactorily, a Subsequent Owner and/or Operator of any portion of the Property shall not have liability protections under this Agreement terminated if the action or failure to act leading to termination is that of any of the PREI Entities or a different Subsequent Owner and/or Operators of any portion of the Property.
- f. Termination of liability relief pursuant to this section shall not affect any defense that the PREI Entities or a Subsequent Owner and/or Operator might otherwise have pursuant to G.L. c. 21E.
- g. In the event the OAG terminates the liability relief provide by this Agreement due solely to the acts of a party other than one of the PREI Entities and/or a Subsequent Owner and/or Operator, the third party liability protections provided in Section IV, Paragraph D, shall not be altered.

C. COVENANT NOT TO SUE BY THE PREI ENTITIES AND ANY SUBSEQUENT OWNER AND/OR OPERATOR

In consideration of the Commonwealth's covenants not to sue in Section IV, Paragraph B, the PREI Entities, for itself and any Subsequent Owners and/or Operators, covenant not to sue and not to assert any claims or causes of action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the Site or this Agreement, including, but not limited to:

1. any direct or indirect claims for reimbursement, recovery, injunctive relief, contribution or equitable share of response costs or for property damage pursuant to G.L. c. 21E;

- 2. any claims for "takings" under the Fifth Amendment to the United States Constitution, under the Massachusetts Constitution, or under G.L. c. 79;
- 3. any claims arising out of Response Actions at the Site or the Property, including claims based on DEP's selection of Response Actions, oversight of Response Actions, or approval of plans for those activities;
- 4. any claims arising out of natural resource restoration activities at the Property, including claims based on the Commonwealth's selection of restoration activities, oversight of restoration activities, or approval of plans for such activities;
- 5. any claims or causes of action for interference with contracts, business relations or economic advantage; or
 - 6. any claims for costs, attorneys fees, other fees or expenses incurred.

D. CONTRIBUTION PROTECTION AND RIGHTS OF AFFECTED THIRD PARTIES

With regard to any Release of Oil and/or Hazardous Material assigned an RTN and referenced in Section III, Paragraph D, above, so long as the Release of Oil and/or Hazardous Material is fully described and delineated in the RAO Statement submitted to DEP with respect to the Site, and the Response Actions upon which the RAO Statement relies meet the Standard of Care in effect when the RAO Statement is submitted to DEP, the PREI Entities and any Subsequent Owner and/or Operator are entitled to the protection G.L. c. 21E, §3A(j)(3), provides from claims for contribution, cost recovery or equitable share brought by third parties pursuant to G.L. c. 21E, §§ 4 and/or 5, and third party claims brought for property damage claims under common law or G.L. c. 21E, §5, based solely on the status of the PREI Entities or any Subsequent Owner and/or Operator as owner or operator of the Property or the Site, provided, however, that:

- 1. The PREI Entities has satisfied the notification provisions of G.L. c. 21E, §3A(j)(3), and 940 CMR 23.06(1); and
- 2. The OAG has provided Affected Third Parties an appropriate opportunity to join this Agreement pursuant to 940 CMR 23.06(2) and (3).

E. GENERAL PROVISIONS

- 1. This Agreement may be modified only upon the written consent of all Parties.
- 2. Unless a Subsequent Owner's liability protections are terminated pursuant to Section IV, Paragraph B, subparagraph 5, or a Subsequent Owner has taken over Response

Actions or otherwise taken responsibility for achieving or maintaining a Temporary Solution, Permanent Solution or ROS for a Release at the Site in accordance with Section IV, Paragraph B, subparagraph 5.d., a Subsequent Owner shall, upon transfer of that Subsequent Owner's fee title interest to all or a portion of the Property: (i) retain the liability protections described in Section IV, Paragraphs B and D; and (ii) be thereafter relieved of all obligations under this Agreement, except for obligations under subparagraphs 2.c.ii and 2.c.iii of Section IV, Paragraph A, with respect to the transferred portion of the Property. This subparagraph does not limit the OAG's ability to terminate the liability protections for a Subsequent Owner pursuant to Section IV, Paragraph B, subparagraph 5 under the conditions described in that subparagraph, and does not limit the obligations and liabilities that a Subsequent Owner may have under G.L. c. 21E or the MCP if liability protections are terminated.

- 3. If any court of competent jurisdiction finds any term or condition of this Agreement or its application to any person or circumstance unenforceable, the remainder of this Agreement shall not be affected and each remaining term and provision shall be valid and enforceable to the full extent permitted by law.
- 4. Each Party warrants and represents to the others that it has the authority to enter into this Agreement and to carry out its terms and conditions.
- 5. This Agreement may be fully executed by all Parties in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.
- 6. The terms of this Agreement shall be effective as of the date it is fully executed by all Parties.
- 7. The Parties acknowledge that New York Life Insurance Company ("NYL"), or its designee, is acquiring Lot F immediately after the entry of this Agreement and therefore will be a Subsequent Owner pursuant to the terms of this Agreement. Notwithstanding its status as a Subsequent Owner, the Parties acknowledge and agree that the Commonwealth and NYL may enter into negotiations for and consummate a subsequent or revised Brownfield Covenant Not to Sue Agreement to address NYL's liabilities with respect to Lot F.

F. REQUESTS TO JOIN THE AGREEMENT

EMSI, by letter dated July 29, 2005, requested to join the Agreement. William Becker III and Leslie A. Becker, by letter dated June 1, 2005, requested to join the Agreement. The OAG, upon consideration of the factors in 940 CMR 23.06, has rejected these requests.

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

By:

Benjamin J. Ericson

Assistant Attorney General Brownfields Unit Chief

Office of the Attorney General

One Ashburton Place Boston, MA 02108

RI O T 4

In the matter of Preferred Real Estate Investments, Inc. Brownfields Covenant Not To Sue Agreement

PREI Attleboro Associates, Limited Partnership
By:
Name (printed):
Title: Michael Balitsaris Senior Vice President
Date:
PREI Attleboro, Inc.
Ву:
Name (printed):
Michael Balitsaris Title: Senior Vice President To
Date:
PREI Attleboro Associates II, Limited Partnership
By:
Name (printed):
Title: Sonior Vice President/
Date:

Date:

In the matter of Preferred Real Estate Investments, Inc. Brownfields Covenant Not To Sue Agreement
PREI Attleboro II finc.
Ву:
Name (printed): Michael Balitsaris Senior Vice President Manual Control
Title:
Date:
PREI Attleboro Associates III, Limited Partnership
Ву:
Name (printed): Michael Balitsaris
Title: Senior Vice President
Date:
PREI Attleboro III, Inc.
Ву:
Name (printed):
Michael Balitsaris

In the matter of Preferred Real Estate Investments, Inc. Brownfields Covenant Not To Sue Agreement

EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

By:

Stephen R. Prichard

Secretary

Executive Office of Environmental Affairs

Commonwealth of Massachusetts

Date: 41406

EXHIBIT A

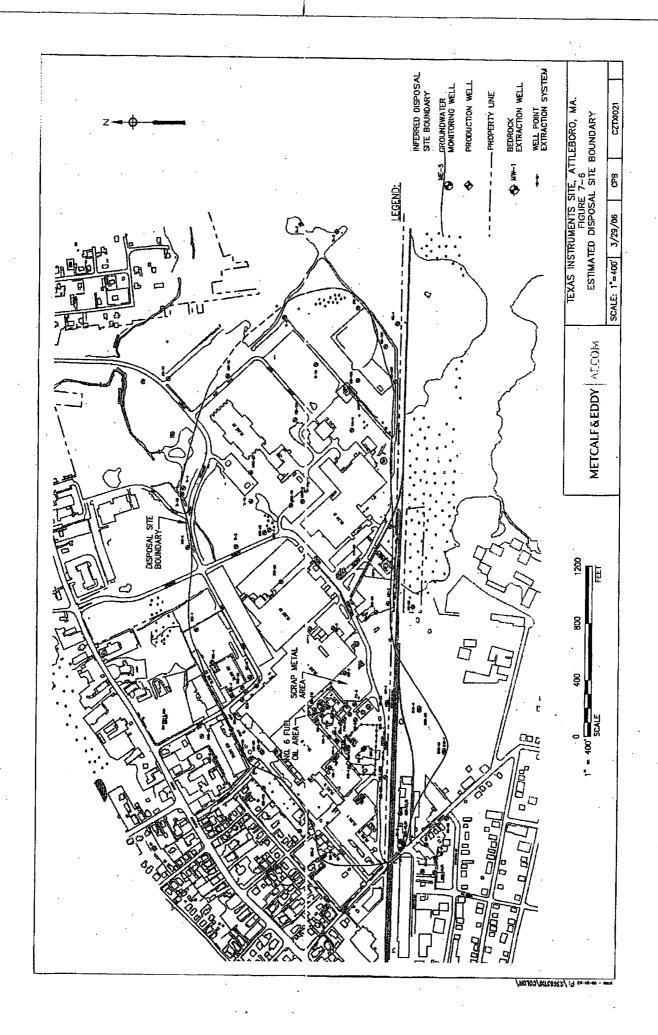


Exhibit A-Page 1

Lot 1, Attleboro, Massachusens

Land in Attleboro, Massachusetts lying on the easterly side of Forest Street and the southerly side of Pleasant Street, with all buildings and improvements thereon, bounded and described as follows:

Beginning at a corner in the easterly line of Forest Street and the southerly line of Field Drive; thence N47deg-25'-49" 5 855:80 feet bounded by the said line of Field Drive to a corner of land owned by Engineering Material Solutions, Inc. thence by the following forty five courses bounded by the last mentioned land: S42deg-56'-08"E 112.12 feet, S42deg-30'-00"E 22.00 feet, N47deg-30' 00"E 0.80 feet, S42deg-30'-00"E 9.70 feet \$47deg-30'-00"W 17.93 feet, S43deg-12' 19"E 82.86 feet, S47deg-30'-00"W 45.35 feet, S42deg-30"-00"E 0.70 feet, 547deg-30'-00"W 5.35 feet, S42deg-19'-20'E 30.12 feet, S48deg-32'-34"W 6.75 feet, S42deg-31'-56"E 29.07 feet, N46deg-55'-13"E 56.35 feet, S44deg-10'-52"E 64.81 feet, N49deg-20'-07"E 10.76 feet, S41deg-48'-26"E 100.81 feet, N47deg-56'-28"E 176.81 feet, S41deg-20'-06 E 108,18 feet, N46deg-27'-35"E 87.71 feet, N43deg-40'-42"W 77.09 feet, N47deg-03'-29"E 36:23 feet, N42deg-36'-01"W 43.07 feet, N47deg-23'-22"E 107.87 cet, S42deg-10'-58"E 82.15 feet, S48deg-22'-57"W 82.57 (eet, \$43deg-02'-09' E 65.19 feet, N47deg-16'-18" E 68:50 feet, S41deg-42'-40'E 193.02 feet, S45dej: 48'-11"W 187,20 feet, S42deg-43'-50"E 38.21 feet, S46deg-42'-58"W 37.54 feet, S40deg-18'-16"E 53.38 feet, N47deg-02'-56'E 243.07 feet, S42deg-26'-21"E 111.10 feet, N50deg-20'-45"E 143.98 feet, S45deg-44'-67"E 114.65 feet, N54deg-11'-92"E 263.75 feet, N42deg-17'-06"W 337.51 feet, N47deg-09'-50"E 24.53 feet, N42deg 31'-59"W 232.79 feet, S48deg-42'-17'W 53,19 feet, N42des-32'-38'W 160.72 feet, S47deg-47'-19"W 46.94 feet, N41deg-56'-45" W 168.41 feet and N4Zeg-11'-42" W180.76 feet to the southwesterly comer of the terminus of Peny Avenue; thence by the following three courses bounded by Perry Avenue: N60deg-20,-20 15 40.00 feet, N29deg-39"-40"W 99.75 feet and N28deg-18'-36"W 4.26 feet to a corner of land owned by Attleboro RA, LLC; thence N58deg-46'-25"E 358.83 feet bounded by the last mentioned land to a corner of land owned by Pleasant Perry Associates, thence N64deg-16'-19"E 425.91 feet bounde I by the said associates land to a corner; thence N23deg-55'-34"W 602.03 feet bounded partly by the said associates land and partly by land owned by MacDonalds Corporation to the southerly line of

の記念の理解が指定の情報はおければいない。というななどのない。とのは、はははは、これには、はないのでは、

Exhibit A - Page 2

Let I, Attleboro, Massachusens

Pleasant Street; thence by the following two courses bounded by Pleasant Street: easterfy 172.38 feet along the arc of a curve to the right of 2400,00 feet radius to a point of tangent and N69deg-13"-26"E 154.09 feet to a corner of land owned by Paul Duffy, Trustee Et Al; thence by the following two courses bounded by the last mentioned land: \$24deg-24'-3.1"W 263.35 feet and N68deg-53'-31"E 288.29 feet to a corner of land owned by James Madenjian; thence N/4deg. 48 10°E. 215.49 feet bounded partly by the said Madenjian land and partly by land owned by the T. I. Federal Credit Union to a corner, thence by the following six courses bounded by the said Credit Union land: S17deg-55*-14"E 18.74 feet, N72deg-06'-55"E 141.71 feet, \$17deg-53'-65"E 152:00 feet, N72deg-06'-55"E 175:00 feet, N17deg-53'-05"W 152.00 feet and N18deg-16'-46"W 9.54 feet to a corner of land owned by James Nunes; thence N71deg-55'-32"E 161 48 to a corner of land owned by Tina M. Wood; then to N72deg-262-42" E 249.77 feet bounded partly by the said Wood land, partly by land owned by the Guillette Revocable Trust, and partly by land owned by Filbert W. Taylor and Rose M. Taylor, to a corner of land owned by Donald Govern Trustee N72deg-36'-44"E 110,50 feet bounded by the said Governo land to the line of land owned by William F. Brinkert and Emily J. Brinkert, then a by the following three courses bounded by the said Brinkert land: \$5deg-42'-1-5"W 197.76 feet, \$87deg-17'-03"5 93.00 feet, and N5deg-18'-56"E 480.52 fest to the southerly line of Pleasant Street; thence by the following two courses bounded by the said Pleasant Street: easterly 92.23 feet along the arc of a curve to the right to a point of tangent and \$89deg-02'-09"E 204.75 feet to a concrete bound at a corner of land owned by William W. Becker III and Leslie A. Becker, thence by the following two courses bounded by the said Becker land: S0deg-42'-36"E 299.18 feet and S81deg-26'-18"E 110.81 feet to the line of land owner by Jason A. Graham and Denise F. Graham; thence Sodeg=54'-16"E 280.82 feet bounded partly by the said Graham land, partly by land owned by lanice E. Williams and Tyler T. Waterman and partly by land owned by Mark E. Sousa and Erin M. Sousa to the line of land owned by Laurie Jones; thence S83deg-05'-44"W 25.00 feet bounded by the said Jones land to a corner; thence S6deg-54-16"E 140.00 feet bounded partly by the said Jones land and partly by land owned by Jonnie Pardy, thence N83deg 05: 44°E 25.00 feet bounded by the said Pardy land to a comer of Cross Street; thence by the following twenty three courses: S6dag-54'-16"E 220.00 feet, N83deg-05'-44"E. 80.00 feet, S6deg-54'-18"E 20.00 feet, \$83deg-05'-44"W 80.00 feet,

Exhibit A-Page 3

Lot 1, Attleboro, Massachusetts

S6deg-54'-16"E 40.00 feet, N83deg-05'-44"E 80.00 feet, S6deg-54'-16"E 140.00 feet, S83deg-05'-44"W 80.00 feet, S6deg-54'-16"E 20.00 feet, N83deg-05'-44"E 80.00 feet, S6deg-54'-16"E 40.00 feet, S83deg-05/-44"W 80.00 feet, S6deg-54'-16"E 40:00 feet, N83deg-05'-44"E 80:00 feet, Sodeg-54'-16'E 414:00 feet, N68deg-65-49"E 41.26 feet, N6deg-54"-16"W 323.89 feet, N83deg-05"-44"E 80,00 feet, S5deg-54'-16"E 80.00 feet, N83deg-05'-44"E 80.00 feet, S6deg-54'-16"E 203.46 feet, N68deg-54'-49"E 41.26 feet and N6deg-54'-16"E 98.35 feet to a corner of land owned by the City of Attleboro; thence by the following two courses bounded by the said City land: N83deg-05'-44"E 68.25 feet and N21deg-11'-32"W 68.37 feet to a corner; thence N71deg-20'-34"E 231.04 feet bounded partly by the said City land, partly by land owned by Dorothy Deblois, partly by the southerly line of Milton Street, and partly by land owned by Catherine I. Hutchinson to a turn; thence N71dep-50'-05"E 135.71 feet bounded partly by the said Hutchinson land and partly by land owned by George G. Nelson and J. Ronald Nelson, thence by the following six courses bounded by the said Nelson land: N71deg-54'-31"E 149.60 feet, N4deg-09'-08"E 164.82 feet, N10deg-20'-16"E 200.6Z feet, N23deg-50'-22"W 359.18 feet, N1deg-02'-54"E 259.20 feet and N1deg-39'-14'E 311.54 feet to the southerly line of Pleasant Street, thence by the following three courses bounded by the said line of Pleasant Streets \$84deg-42-42"E 8.14 feet to a point of curve, easterly 212.43 feet along the arc of a curve to the left of 1196.61 feet racius to a point of change in curvature, and easterly 5.91 feet along the arc of a curve to the left of 1076.25 feet radius to a corner of land owned by Robert W. Arsenault, Jr. and Nancy Arsenault, thence by the following two courses bounded by the said Arsenault land: 820deg-56'-40"E 541.52 feet and N81deg-25'-58"E 375.93 feet to a corner of land owned by Kevin J. O'Gorman; thence by the following four courses bounded by the said O'Gorman land: S8deg-34'-22"E 23).69 feet, S10deg-20'-00"E 104.44 feet, S83deg-12'-35'E 82.78 feet, S18deg-27'-33"W 318.63 feet, and S88deg-59'-23"E 255.76 feet to a corner of land swied by the United States Postal Service; thence by the following two courses by the said Service land, S82deg-09'-10"B 176.88 feet and \$79deg-09'-57'E 310.68 feet to a corner of land owned by the Cooper Heirs and Texas Instruments Inc.: thence by the following two courses. bounded by the last mentioned land: S53deg-27'-31"E 168.36 feet and S53deg-20'-02"E330.52 feet to a corner of land owned by Robert F. Chilson and Dorolly L. Chilson; thence by the following four courses bounded by the said Chilson land: S36deg-51'-55"W 152.32 feet, S36deg-42'-51"W 422.81 feet, S25deg-05'-

Exhibit 4 - Page 4

Lot 1, Attleboro, Massachusetts

30"W 223.84 feet and S12deg-24" 17"E 302.90 feet to a turn; thence S12deg-50"-38"E 194.71 feet bounded partly by the said Chilson land and partly by land owned by the City of Attleboro to a comer of Broadway Street; thence S12deg-04"-35"E 112.96 feet bounded partly by Broadway Street and partly by the other land owned by the City of Attleboro to the line of land owned by Conrail; thence by the following five courses bounded by the said Conrail line: N88deg-41"-43"W 638.03 feet, S40deg-28"-56"E6.02 feet, N88deg-41"-43"W 3911.00 feet, N3deg-18"-17"E 10.01 feet and N88deg-41"-43"W 1780.60 feet to the easterly line of Forest Street; thence N46deg-16"-30"W 145.10 feet bounded by the said line of Forest Street to the point of beginning; containing about 241.58 acres.

The above described premises is shown as Lot 1 on a plan entitled "Land surveyed for Texas histoments, Inc. in Attleboro, Massachusetts, E. Otis Dyer, RPLS, Rehoboth, Mass., scale 1"= 150", July 23,2004.

Exhibit A - Page 5

Lot 2, Attleboro, Massachusetts

Land in Attleboro, Massachusetts lying off the easterly side of Forest Street bounded and described as follows:

Beginning at the northeasterly corner of the described premises and in the southerly line of land owned by Courail and at the northwesterly corner of land owned by the Heirs of Thomas Knott and Isabelia Knott; thence S5deg-21'-21"E 134.00 feet bounded by the said Knott Heirs to a corner of land owned by the City of Attleboro; thence N88deg-13'-07"W 742.00 feet bounded partly by the said City land and partly by land owned by Leo W. Fontaine, Ir. to the line of land owned by Massachusetts Blectric Company; thence N3deg-18'+16"B.127.00 feet bounded by the Electric Company land to the line of the said Courail land; thence S88deg-41'-43"H 722.00 feet bounded by the said Courail land to the point of beginning; containing about 2.18 acres.

Exhibit 4 - Page 6

Lot 3, Attleboro, Massachusetts

Land in Attleboro, Massachusetts lying on the easterly side of Forest Street and the southerly side of Pleasant Street, with all buildings and improvements thereon, bounded and described as follows:

Beginning at the northerly comer of the described premises on the southerly line of Pleasant Street and at the northwesterly corner of land owned by Raymond Mui Et Al; thence S33deg-56'-03"E 174.17 feet bounded by the said Mui land to a comer of land owned by Beverly Enterprises MA, thence \$39deg-15'-19"E 139.31 feet bounded by the last men joned land to a corner of land owned by Thomas & Bens Corporation; thence by the following two courses bounded by the said Corporation land: S44deg-47'-50"E 199.36 feet and No2deg-35'-40"E 425.42 feet to the westerly line of Perry Avenue; thence \$29deg-39-40'E 39.73 feet bounded by the said line of Perry Avenue to a corner of land owned by Engineered Materials Solutions Inc.; thence by the following four courses bounded by the last mentioned land: S62deg-49'-28"W 192.22 feet, S47deg-16'-18"W 151.47 feet, S40deg-48'-01"E 22.15 feet, and S49deg-06'-22"W 375.44 feet, to a corner in the easterly terminus of Field Drive, a private way, thence N39deg-13'-48"W 40.06 feet bounded by the terminus of Field Drive to the northerly line of said street; thence \$17deg-25"-49"W 859.92 feet bounded by the said line of Field Drive to the easterly line of Forest Street, thence N46deg-16'-30"W 275.00 feet bounded by the said line of Forest Street to the southerly line of Horton Street; thence N47deg-26'-27"E 318.38 feet bounded by the said line of Horton Street to a comer of land owned now or formerly by David Corkin, and Bonnie Corkim; thence by the following three courses bounded by the said Corkim land: S41deg-50'-37"E 125,30 feet, N47deg-26"-27"E 75.60 feet and N41deg-50'-32"W 125.00 feet to the southerfy line of Horion Street; thence N47deg-26'-27"E 150.03 feet bounded by the said line of Horton Street to the westerly line of Gustin Avenue; thence by the following three courses bounded by the said Gustin Avenue; S41deg-50*-37" 200.00 feet, N48deg-09*-23" E 32.98 feet and N41 deg-50'-37"W 50.43 feet to a corner of land owned now or formerly by M. & F. Fiest; thence N48deg-10 20"E 545.27 feet bounded by the said Fiest land and others to the southeasterly comer of land owned by Lea B. Lacroix: thence N42deg-06'-12"W 147.84 fee bounded by the said LaCroix land to a corner of Horton Street; thence by the following two courses bounded by said

Exhibit A - Page 7

Lot 3, Attleboro, Massachusens

Horton Street: N43deg-29'-46"W 40.20 feet and S50deg-16'-20"W 5.45 feet to a corner of land owned by Edward Mega and Congeta Mega; thence N33deg-56'-03"W 308.78 feet bounded by the said Mega land and land now or formerly owned by lackal Realty Trust and land owned by Manuel Guillen and Manuel Guillen and Manuel Guillen Ir. to the southerly line of Pleasant Street; thence by the following three courses bounded by the said line of Pleasant Street; southeasterly 10.85 feet along the arc of a curve to the right of 7.00 feet radius to a corner, S57deg-05'-08"E 48.61 feet to a corner and northeasterly 11.14 feet along the arc of a curve of the right of 7.00 feet radius to the point of beginning containing about 6.64 acres.

Exhibit A - Page 8

Land in Attleboro, Massachusetts lying on he westerly side of Boston Street, with all improvements thereon, bounded and described as follows:

Beginning at a point in the westerly line of Boston Street and at the southeasterly corner of land owned by Joseph G. Fournier, Jr. et ux. as shown on a plan hereinafter referred to; thence \$06°-54\cdot 32\cdot E\$ 40.00 feet by the said line of Boston Street to a corner of land owned by John F. Byrnes and Ann M. Byrnes; thence by the following two courses bounded by the said Byrnes and; \$83°-05'-44"W 80.00 feet and \$80°-05" W 40.00 feet to the line of land owned by said Fournier; thence \$83°-05'-44"E 80.00 feet bounded by the said Fournier land to the point of beginning; containing about 3200 square feet.

The above described premises is shown as Lot 154 on a plan entitled "Plan Of Land In Attleboro, Massachusetts Owned By Texas Instruments, Inc." by E. Olis Dyer, R.P.E., R.P.L.S., dated July 30, 2004.

EXHIBIT B

SITE DESCRIPTION

The site includes a 270 acre track of land located at 34 Forest Street in Attleboro, Massachusetts (the "Property"), as well as some of the surrounding properties. Due to the historic industrial use of the Property, chlorinated solvents, heavy metals and oil are present in the soils at the Property. In addition, groundwater beneath the Property and beneath some downgradient properties has been impacted by chlorinated solvents. Since early 1980, the Massachusetts Department of Environmental Protection ("DEP") has received various notices of release of oil and/or hazardous materials at or from the property and in response, assigned six (6) separate Release Tracking Numbers ("RTNs") for the releases. The portions of the Property and adjacent land where oil and hazardous materials were and have come to be located as a result of the releases with lead RTNs 4-000022, 4-016070, and 4-0018848 constitute the "Site" as that term is defined in 310 CMR40.0006.

In late 1982, Texas Instruments ("TI") first detected the presence of volatile organic compounds ("VOCs") dissolved in groundwater concurrent with an evaluation of water quality from several newly installed production wells. Detected VOCs consisted primarily of trichloroethene ("TCE"), tetrachloroethene ("PCE") and related chlorinated aliphatic hydrocarbons that are typically considered degradation products. RTN 4-000022 was assigned for this release. Three separate releases are associated with RTN 4-000022 including: (1) a release of solvents originating from piping in Building 10 which was conveyed to a duck pond that existed at that time near Building 4; (2) a release of solvents which occurred in the chemical stockade west of Building 11; and (3) a release of solvents which likely occurred in a former drum storage area between Buildings 3 and 6. In addition, an acid neutralization lagoon and former TCE aboveground storage tank could have been a source of solvents east of Building 10. The soil and groundwater sampling in the vicinity of Building 10 confirmed that residual TCE exists in soils in this area with concentrations in the 1 ppm to 5 ppm range. Recent sampling has revealed TCE levels much lower in the range of 8 ppb however, based on the persistence of concentrations in the area and the elevated soil and soil gas concentrations, it is possible that residual DNAPL is present in the area. It has been documented that chlorinated solvents penetrated the entire thickness of the overburden and are present in the bedrock at the Property. The Release has a Class C "Temporary Solution" Response Action Outcome ("RAO") Statement that may be appropriate for the release until a Permanent Solution is feasible to achieve. TI currently operates a groundwater treatment system to address the release.

In 1993, a potential release of metals from the Short Bar Scrub Line was documented. During a re-evaluation of the release in 1999, Tl concluded that additional soil and groundwater sampling was necessary to adequately characterized the release. In February 2001, based on the results of additional sampling, Tl notified DEP that measured concentrations exceeded reportable concentrations. The release was assigned RTN 4-16070 which relates to barium, beryllium, cadmium, chromium, lead, mercury, nickel, silver and zinc impacts to soil and groundwater. The investigation extended beyond the Short Bar Line to include Tl's entire Building 3 pickle and scrub line. Tl submitted a Phase II Comprehensive Site Assessment and Phase III Remedial Action in February 2004 with respect to this release and an Addendum in July, 2005. The Addendum included a risk characterization analysis and conclusions that the areas affected by the release did not exceed Upper Concentrations Limits and that the requirements of a Class A

RAO had been met. Two Activity and Use Limitations were subsequently recorded for the portion of the Property affected by the release.

A mineral oil release was reported to DEP on December 20, 2004 and assigned RTN 4-18848. Field investigations, including soil boring and monitoring well installation, were conducted to characterize the release and revealed 0.6 inches of free product in a monitoring well within the Building 1 courtyard on the Property. Building 1 is located at the southwest corner of the former TI facility near the intersection of Ferest Street and the MBTA Railroad tracks. The predominant contaminant detected in soils and proundwater in the courtyard was C19-C36 aliphatics. The source of the mineral release appears be condensate dripping from leaking connections of overhead piping located inside the courtyard. Also detected in shallow soils were relatively low concentrations of PAHs consistent with the prior burning of coal at the site. Relatively low concentrations of TCE were detected in soil samples collected from beneath the water table. The presence of TCE in this location is likely associated with the larger TCE release that was the subject of RTN 4-000022. The mineral release is mostly located within the western half of the courtyard with the highest levels of contamination extending from the ground surface to the approximate depth of the water table at its deepest (i.e., 6 feet). TI anticipates conducting a Removal Action for soils to achieve a Permanent Solution in coordination with construction and demolition of Building 1.

EXHIBIT C

